IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3037 OF 2005

M/s.Shriman Organic Chemical
Industries Ltd. & Ors. ...Petitioners

Versus

The State of Maharashtra & Anr. ...Respondents

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Mr.Chourasia i/b Mr.A.M.Saraogi for Petitioners.

Mrs.M.M.Deshmukh, A.P.P. for Respondent No.1.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 21, 2005.

P.C.

1. First contention raised before me is that the complainant is relying on the Power of Attorney. It is stated that the complainant is only Manager (Marketing) of the Complainant Company. No material has been produced on record to show that he has been duly authorised and empowered to file the complaint. This submission does not commend to me. In the first paragraph of the complaint, it is clearly mentioned that

Mr.Tarun K.Gehani, Manager (Marketing) has been authorised/empowered to file complaint. The factum of authority will be relevant for the trial. That cannot be ground for quashing, especially when there is clear averment made in the complaint about the fact that Mr.Tarun K.Gehani possessed necessary authority on behalf of the Company to institute the complaint.

2. The next argument canvassed on behalf of the Petitioners is that the Power of Attorney makes no reference to the authority, and the Manager (Marketing) cannot be authorised by the Company to file the complaint. No provision or any regulation has been produced on record to suggest that authority in favour of Manager (Marketing) cannot be given by the Company. Needless to observe that it is open to the Company to authorise any person whether employee or otherwise to prosecute any criminal action, on due authority given in that behalf. In the circumstances, even this submission will have to be rejected.

3. The last argument canvassed before me is

that the Petitioners had issued instructions to the Complainant not to deposit the cheques in question. Reliance is placed on the communication sent by the Petitioners to Mr.Tarun K.Gehani, Manager (Marketing) dated 28th July 1997. Reliance is placed on the decision of Madras High Court in the case of **Mubarak Nisha vs. R.M.Subramanian reported 2000 DoCh.372.** Insofar as this decision is concerned, what is produced before me is only the first page of the Judgment which is page 372 of the Journal, which is Head-note portion. I have no advantage of the facts of that case in which the observations referred to in the Head-note have been made in that case. In the present case, the document on which Petitioners relies clearly mentions that the Complainant was subsequently informed by fax on 23rd July 1997 not to deposit the cheques as arrangement is being made to make the payment through pay order. If the cheques were already deposited, such communication will be of no avail. In any case, those aspects will be relevant at the trial and cannot be ground for quashing. Accordingly, this Petition should fail. The same is rejected.

A.M.KHANWILKAR, J.